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FILE: 04M-1

MEMORANDUM FOR: General Counsel

VIA: Acting Deputy Director for Administration

FROM:
Director of Security

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SUBJECT: Revising Restrictions on Intelligence Activities

REFERENCE: Memorandum from General Counsel, dated
3 December 1980, same subject (OGC 80-10379)

1. In keeping with your request to present any comments or suggestions on the "first cut" of Subject, we have studied reference and related documents, specifically PD/NSC-19 and Headquarters Regulation Restrictions on Intelligence Activities. As a result, the following is offered for your consideration:

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a. We concur with the proposed modification of Section 1-706 that addresses the matter of reporting possible violation of Federal crimes by individuals who are not employees. However, the modification does not address another aspect of reporting of direct interest to this Office. Section 1-706 does not provide for an implementing directive that would provide guidance on reportable offenses by employees. As a result, we risk erring on the side of caution and almost certainly report activities that represent no more than minor technical violations that are not referred to the Department of Justice. It would be most helpful if Section 1-706 were revised to permit the specific guidance provided in Annex F, paragraph 2c, as such guidance should apply to employees.

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b. In terms of paramount interest, the Office of Security offers the strongest endorsement to the proposed change in Section 2-208 that concerns the exchange of information within the Intelligence Community. Currently, we are denied the names of U. S. persons that figure in reports provided by other government agencies. Since deletion of the names defeats the purpose of valid inquiries that must be established as legitimate on a case-by-case basis to "assess the significance of the information," change is essential to eliminate a needless and costly bureaucratic obstacle.

2. Beyond change in cited provisions of Executive Order 12036, we have reviewed [] in terms of significant problem areas. Our comments:

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a. [] (b) is subject to very strict interpretation and has occasioned a most cautious approach to pursuit of domestic investigations that are not clearance related. Particularly restrictive is the issue of "consent to investigate" either actual or implied (the Glomar approach). We are currently constrained by concern of violation of law or infringement on the responsibility of the FBI. In this area, we are in need of relief that would facilitate operational support readiness and reaction to service requests from the Directorate of Operations. Such requests involve meaningful information that cannot be developed from the only source currently available, public records. We are limited in our ability to respond professionally to matters directly related to foreign intelligence objectives and, especially disturbing, cannot provide relevant personal data on those U. S. persons who come to the Agency's attention in connection with the Directorate of Operation's responsibility. Further, we are dependent on Office of General Counsel interpretations of situations that are new or may extend beyond specific and limited parameters of clearance-related investigations. In brief, we advocate a revision of [] that, within the law, would permit a less restrictive approach that recognizes the value and importance of effective support activities directly related to foreign intelligence objectives.

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